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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,792	01/03/2004	Jeff Scott Eder	VM-67	1490
53787	7590	10/05/2010	EXAMINER	
ASSET TRUST, INC. 2020 MALTBY ROAD SUITE 7362 BOTHELL, WA 98021			CHENCINSKI, SIEGFRIED E	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/750,792	<b>Applicant(s)</b> EDER, JEFF SCOTT	
	<b>Examiner</b> SIEGFRIED E. CHENCINSKI	<b>Art Unit</b> 3695	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 26 August 2010.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 175-197 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 175-197 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \*    c)  None of:
1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/26/10</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 26, 2010 has been entered.

### ***Status***

2. Claims 175 – 197 are pending.

Claims 175 – 197 are amended.

The amended Abstract is acknowledged and the related objection is withdrawn.

### ***Claim Objections***

3. The phrase “storing a one or more locations” in the independent claim limitations is objected to. It appears that this may be a typographical error and that Applicant may have meant the phrase “storing at one or more locations”.

Correction is required.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. **Claims 183-187 and 193-197 are rejected under 35 U.S.C. 101** because the claimed invention is directed to non-statutory subject matter. Independent claims 183 and 193 recite a process comprising preparing, processing, obtaining, searching, storing, counting, classifying, developing, quantifying and outputting. Dependent claims

Art Unit: 3695

183-187 and 194-197 are rejected because of their dependence on independent claims 183 and 193.

Based on Supreme Court precedent, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should positively recite the other statutory class to which it is tied, for example by identifying the apparatus that accomplished the method steps or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. Without these elements the invention involves human interaction which is not patentable subject matter.

The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. See Benson, 409 U.S. at 70. Certain considerations are applicable to analysis under either branch. First, as illustrated by Benson and discussed below, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility. See Benson, 409 U.S. at 71-72. Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity. See Flook, 437 U.S. at 590. (*In re Bilski*, En banc, U.S. Court of Appeals for the Federal Circuit, Washington, DC, Oct. 30, 2008). Per *In re Bilski*, these requirements must be present in each meaningful limitation step and must not merely rely on such limitations in the preamble.

In the instant case, the limitations beginning with searching, storing, counting, classifying, developing and quantifying contain significant solution activity and must therefore contain the statutory component or refer to it. The remaining steps may

contain the statutory component as well, but is not required since they are insignificant solution activities.

Further, the statutory component must more specifically be an automated programmed electronic computer or programmed computer processor or programmed computer server, since simply a computer could mean a human using a desktop computer to perform all of the linking steps by hand using various tools including a computer to perform all of the claimed tasks. For example, the first limitation containing the statutory component should be stated as " searching through the use of an automated programmed electronic computer system for one or more ...". Then, if the claimed invention is in fact a computer automated process, each prior (optional) and succeeding step could simply state "by" the computer system ...". Otherwise a human could still be using a computer to perform any steps which simply claim a "computer system".

It is unclear to the examiner whether Applicant's disclosure supports the needed statutory components since a human figure is included in the drawings.

Applicant may have support for overcoming this rejection. If so, Applicant needs to point the location of the needed support in the response to this office action.

Please note the Board of Patent Appeals Informative Opinion *Ex parte Langemyer et al*-  
[http://iplaw.bna.com/iplw/5000/split\\_display.adp?fedfid=10988734&vname=ippqcases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0](http://iplaw.bna.com/iplw/5000/split_display.adp?fedfid=10988734&vname=ippqcases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0)

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**5. Claims 175-197 are rejected under 35 U.S.C. 112, first paragraph,** as failing to comply with the enablement requirement. The claim(s) contains subject matter which

Art Unit: 3695

was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims limitations language in light of the specification is too general in order for an ordinary practitioner to specifically know what the invention is and to be able to apply it in a specific manner. The data inputs have no concrete basis and are purely subjective, as are the keywords. Also subjective are the user inputs. The expression "common schema" is absent in the specification so that a practitioner would be forced to invent his own definition for such a common schema. Further, the very nature of the problem presented in the Background section and the description of the invention in the summary make any solution unique, arbitrary and indefinite. All inputs are forced to be unique and subjective according to the assumptions and biases of judgment of each user. Therefore, there is no objective answer possible. All solutions to the process of this invention are guaranteed to be unique and highly subjective. The search results will accordingly be unique to every search. No two ordinary practitioners of the art working independently would be capable of replicating the results of implementing this invention. For purposes of examination the examiner is forced to make prior art search assumptions in order to locate prior art which the broadest reasonable interpretation.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**6. Claims 175-197 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**a)** The claims limitations language in light of the specification is too general in order for an ordinary practitioner to specifically know what the invention is and to be able to apply it in a specific manner. The data inputs have no concrete basis and are purely subjective, as are the keywords. Also subjective are the user inputs. The expression

Art Unit: 3695

“common schema” is absent in the specification so that a practitioner would be forced to invent his own definition for such a common schema. Further, the very nature of the problem presented in the Background section and the description of the invention in the summary make any solution unique, arbitrary and indefinite. All inputs are forced to be unique and subjective according to the assumptions and biases of judgment of each user. Therefore, there is no objective answer possible. All solutions to the process of this invention are guaranteed to be unique and highly subjective. The search results will accordingly be unique to every search. No two ordinary practitioners of the art working independently would be capable of replicating the results of implementing this invention. For purposes of examination the examiner is forced to make prior art search assumptions in order to locate prior art which the broadest reasonable interpretation.

**b)** Specific indefiniteness contained in he claimed limitations, with claim 183 as exemplary:

- preparing a plurality of data from a plurality of organization related systems, a user input and an Internet for use in processing obtaining one or more keywords and a set of classification rules for each keyword from a user – how is this data defined,? .. how are the organization related systems defined ?
- searching for one or more keywords matches on the Internet – how does one define the “one or more key words” ?
- storing a one or more locations for each keyword match found during the search of the Internet – how are the locations defined ?
- counting and classifying said matches from each stored location for each keyword – how is the classifying defined ?
- creating one or more keyword performance indicators using said counts for each keyword and a summary of said performance indicators for each keyword – how are the “one or more keyword performance indicators using said counts for each keyword defined” ? how is the “summary of said performance indicators for each keyword” defined ?

Art Unit: 3695

- developing a model of an organization financial performance by a category of value that utilizes the summaries for each keyword as an input – how is the “model of an organization financial performance by a category of value that utilizes the summaries for each keyword as an input” defined ?
- quantifying and outputting a contribution of each of the one or more keywords to the organization financial performance of value using said model of organization financial performance where keyword performance indicators are linked together when they are not independent, and where the categories of value are selected from the group consisting of current real operations, real options and market sentiment – how is the quantifying defined ? how is outputting defined ? what is the definition of "keyword performance indicators are linked together when they are not independent," – when are they linked together and when are they independent ? What are the categories of value from each of current operations, real options and market sentiment ? What distinguishes a real option from a fake or unreal option ? How are eligible market sentiments defined ?

Re. claim 184 and related – how is keyword relevance defined ?

## **7. Future Amendments**

Applicant is advised to avoid new matter in complying with these requirements, and to refer to the locations of support in the specification when making such amendments.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



**8. Claims 175-181 & 183-197 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Pant et al. (US Patent 6,012,053, hereafter Pant) in view of Sandretto (US Patent 5,812,988).

**Re. Claims 175, 183, 188 and 193**, with claim 193 as exemplary, Pant discloses a computer implemented keyword relevance method, storage device and system, comprising:

- preparing a plurality of data from a plurality of organization related systems, a user input and an Internet for use in processing obtaining one or more keywords and a set of classification rules for each keyword from a user (user input – Col. 1, ll. 54-55; Fig. 1, 108; Fig. 2, 108; Fig. 3, 152; Internet and external databases – Col. 3, ll. 14-32; a common schema is an obvious required factor since that is an implicit requirement for doing a search which has to be organized instead of being non-directional and meaningless, since any organized search will have a focused goal, i.e. a common schema);
- searching for one or more keywords matches on the Internet (col. 3, ll. 14-32),
- storing a one or more locations for each keyword match found during the search of the Internet (Fig. 3, 172; Fig. 4, 206),
- counting and classifying said matches from each stored location for each keyword (Col. 1, ll. 56-62; Fig. 3, 168, 174, 176, 180),
- creating one or more keyword performance indicators (Fig. 3, 158, 166),

While Pant implies the integration of a plurality of data by the user in order to formulate his search, and then teaching the integration of data through the relevancy oriented search process, Pant does not explicitly disclose “integrating a plurality of data from a plurality of organization related systems”. However, Sandretto discloses integrating a plurality of data from a plurality of organization related systems (Abstract – ll. 1-2; Col. 8, l. 52 – Col. 9, l. 39; portfolio generation – Col. 8, ll. 58, 61, integrating data from a plurality of organization related systems – Col. 8, 61—Col. 9, l. 19).

Pant does not explicitly disclose

Art Unit: 3695

- developing a model of an organization financial performance by a category of value that utilizes the summaries for each keyword as an input,
- quantifying and outputting a contribution of each of the one or more keywords to the organization financial performance of value using said model of organization financial performance where keyword performance indicators are linked together when they are not independent, and where the categories of value are selected from the group consisting of current real operations, real options and market sentiment

However, Sandretto discloses a model of organizational financial performance by category of value that utilizes the summaries for each keyword as an input (Col. 8, l. 52 – Col. 9, l. 39). It would have been obvious to an ordinary practitioner of the art at the time of Applicant's invention to have combined the art of Pant for conducting relevance search with the art of Sandretto for developing a model of organization financial performance by category of value that quantifies an impact of each of one or more keyword performance indicators where a plurality of keywords and classification information are obtained from user input. Also, "obtaining one or more keywords and a set of classification rules for each keyword from a user " is an implicit part of the method disclosed by Pant and Sandretto and as such would have been an obvious component of determining the relevance to a keywords as disclosed in Pant (Col. 1, ll. 56-62; Fig. 3, 168, 174, 176, 180). Further, the ordinary practitioner would have seen it as obvious to quantifying and outputting a contribution of each of the one or more keywords to the organization financial performance of value using said model of organization financial performance where keyword performance indicators are linked together when they are not independent, and where the categories of value are selected from the group consisting of current real operations, real options and market sentiment. The reason is that this is a routine activity for such a practitioner for preparing the output results of such modeling.

Therefore, it would have been obvious to an ordinary practitioner of the art at the time of Applicant's invention to have combined the disclosures of Pant with the disclosures of Sandretto in order to develop a computer implemented keyword relevance method,

Art Unit: 3695

motivated by the desire to provide a method for estimating asset risks and values (Sandretto, Col. 8, ll. 52-53).

The clause “where keyword performance indicators are linked together when they are not independent” is not considered because it is Nonfunctional Descriptive Material. It does not further limit the claims (MPEP 2106, IV, 1. (b).).

**Re. Claims 176, 184, 189 & 194; 177 & 185; 180; & 181, 187, 192 & 197, the following limitations are not explicitly disclosed by Pant:**

**Re. Claims 176, 184, 189 & 194**, wherein the organization physically exists and each of the quantified .keyword contributions comprise a measure of keyword relevance.

**Re. Claims 177, 181, 187, 192 and 197**, wherein a the plurality of data are stored in an application database in accordance with a common schema and where each keyword maps to a common schema.

**Re. Claims 178, 185, 190 & 195**, Pant does not explicitly disclose wherein a plurality of organization related systems are selected from the group consisting of advanced financial systems, basic financial systems, alliance management systems, brand management systems, customer relationship management systems, channel management systems, intellectual property management systems, process management systems, vendor management systems, operation management systems, sales management systems, human resource systems, accounts receivable systems, accounts payable systems, capital asset systems, inventory systems, invoicing systems, payroll systems, enterprise resource planning systems (ERP), material requirement planning systems (MRP), scheduling systems, supply chain systems, quality control systems, purchasing systems, risk management systems and combinations thereof. However, selecting a plurality of these related systems would have been obvious to the ordinary practitioner from the disclosure of Sandretto, for example capital asset systems, accounts receivable systems, accounts payable systems, inventory systems, etc.. (Col. 8, l. 52 – Col. 9, l. 19). Therefore, it would have been obvious to an ordinary practitioner of the art at the time of Applicant’s invention to have combined the disclosures of Pant with the disclosures of Sandretto in order to

Art Unit: 3695

develop a computer implemented keyword relevance method, motivated by the desire to provide a method for estimating asset risks and values (Sandretto, Col. 8, ll. 52-53).

**Re. Claims 180**, wherein a data processing method further comprises storing a plurality of converted data in one or more tables to support organization processing.

**Re. Claims 181, 187, 192 & 197**, wherein each keyword maps to the common schema.

**Re. Claims 182**, wherein each of quantified key word contributions comprise a measure of relevance.

However, **Re. Claims 176, 184, 189 & 194; 177 & 185; 180; & 181, 182, 187, 192 & 197**, these steps would have been obvious to the ordinary practitioner at the time of Applicant's invention because they are logical elements of a computer automated search process.

**Re. Claims 179, 186, 191 & 196**, Pant does not explicitly disclose wherein the steps further comprise multiplying the quantified contribution of each keyword to each category of value by the value of each category of value to determine the value of each keyword to the organization.

However, multiplying the quantified contribution of each keyword to each category of value by the value of each category of value to determine the value of each keyword to the organization would have been obvious to the ordinary practitioner from the disclosure of Sandretto, including components of value, sub components of value, known value drivers, elements of value, sub elements of value, non-relevant attributes and combinations thereof (Col. 8, l. 52 – Col. 9, l. 19). Therefore, it would have been obvious to an ordinary practitioner of the art at the time of Applicant's invention to have combined the disclosures of Pant with the disclosures of Sandretto in order to develop a computer implemented keyword relevance method, motivated by the desire to provide a method for estimating asset risks and values (Sandretto, Col. 8, ll. 52-53).

Art Unit: 3695

### ***Response to Arguments***

9. Applicant's arguments filed on August 26, 2010 have been fully considered but they are not persuasive.

**ARGUMENT A:** Applicant traverses the rejections under 35 USC 101 (p. 9).

**RESPONSE:**

Applicant is referred to the new basis of rejections under 35 USC 101 above.

**ARGUMENT B:** Applicant traverse the rejections under 35 USC 103(a) (p. 9 – p. 10).

**RESPONSE:**

**1) THE MATTER OF LAW**

**a) TRAVERSAL:**

MPEP 2141, IV.

If an applicant disagrees with any factual findings by the Office, an effective traverse of a rejection based wholly or partially on such findings must include a reasoned statement explaining why the applicant believes the Office has erred substantively as to the factual findings. A mere statement or argument that the Office has not established a *prima facie* case of obviousness or that the Office's reliance on common knowledge is unsupported by documentary evidence will not be considered substantively adequate to rebut the rejection or an effective traverse of the rejection under 37 CFR 1.111(b). Office personnel addressing this situation may repeat the rejection made in the prior Office action and make the next Office action final. See MPEP § **706.07(a)**. **706.07(a)**. (underlining added).

In other words, a proper traversal requires a combination of evidence and rationale sufficient to put the examiner's rejection into serious question.

**b) OBVIOUSNESS ANALYSIS**

**Guidelines for making a Proper *Prima Facie* Case of Obviousness** according to the

US Supreme Court's *KSR* Decision

**BASES FOR OBVIOUS REJECTION**

(1) Begin with the Graham vs Deere Analysis  
Provide Facts.

- A disclosure in a non-analogous art which solves the problem is valid prior art

Art Unit: 3695

All elements do not have to be factually demonstrated.

(2) Valid Non-Factual Analysis – Must explain the differences between the prior art and what one of ordinary skill would have seen as obvious after consideration of the facts according to the following considerations:

- Common Sense
- Obvious to Try
- Expected/Predictable Results
- Expectation of Success
- Design incentives or market forces would have made this improvement obvious
- The state of the art would have made the practitioner recognize the opportunity for improving upon the prior art.
- In re Khan factors – obvious or suggested to one of ordinary skill based on his knowledge – the “inferences and creative steps one of ordinary skill would employ”

(3). ORDINARY SKILL

An examiner may use their personal knowledge to describe the knowledge of one of ordinary skill and what such one would have seen as obvious from the evidence. If the examiner does not explicitly define the one of ordinary skill then the one of ordinary skill is defined by the relevant prior.

(4) FACTORS PROHIBITING A PRIMA FACIE CASE OF OBVIOUSNESS - i.e. ALLOWABILITY

- Unexpected/Unpredictable Results
- Technological barriers to satisfactory combination.
- Factors in the above rationales do not hold up to challenge

### ***In re Kahn***

The guidelines provided by *In re Kahn* as referenced in the US Supreme Court’s decision of April 2007 in the case known as KSR, are as follows:

The Court noted that “[t]o facilitate review, this analysis should be made explicit. *Id.* (citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the

Art Unit: 3695

challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 1741, 82 USPQ2d at 1396.

## **2) IN CONCLUSION:**

- a) Applicant has submitted broad generalities which fail the requirements of proper traversal.
- b) Applicant has failed to submit a proper traversal since Applicant has merely asserted that the references do not teach without providing the required combination of evidence and rationale to put the examiner’s rejection into serious question.
- c) As noted in the rejections under 35 USC 112-1<sup>st</sup> and second paragraphs, the claims are vague and indefinite to the extreme and thus can be rejected under the Supreme Court’s obviousness analysis guidelines under a broad array of prior art.
- d) The above seven non-factual obviousness factors apply to applicant’s claims.
- e) None of the three allowance factors apply to applicant’s claims versus the prior art. There are no unexpected results and no technological barriers to satisfactory combination since this is a virtually infinitely flexible process, whether performed by humans or by computer programming.
- f) The *In re Kahn* quotation demonstrates that the ordinary practitioner, well versed in the art as defined and demonstrated by the prior art references, would have been fully conversant with the claimed techniques.
- g) Therefore, the examiner believes that he has made a proper prima facie case of obviousness in the rejection of claims 175-197 according to the above KSR guidelines. It is important to point out the emphasis made in KSR of their quotation of the above language in *In re Kahn*. This language emphasizes the importance of considering the phrase “for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ”. The examiner has highlighted this consideration in the rationale of every rejection in making a proper prima facie case of obviousness.

Art Unit: 3695

**ARGUMENT C:** Applicant traverses the rejections under 35 USC 112-1<sup>st</sup> paragraph (pp. 10-13).

**RESPONSE:**

- 1) Applicant has failed to present a proper traversal since no combination of evidence and rationale is presented sufficient to put the examiner's case into serious question.
- 2) Applicant is referred to the new basis of rejections under 35 USC 112-1<sup>st</sup> paragraph above.

**ARGUMENT D:** Applicant traverses the rejections under 35 USC 112-2<sup>nd</sup> paragraph (pp. 13-14).

**RESPONSE:**

- 1) Applicant has failed to present a proper traversal since no combination of evidence and rationale is presented sufficient to put the examiner's case into serious question.
- 2) Applicant is referred to the new basis of rejections under 35 USC 112-2<sup>nd</sup> paragraph above.

**ARGUMENT E:** Regarding copending applications and the statement under 37 CFR 1.111 (pp. 17).

**RESPONSE:**

These statements are noted but are not germane to the examination of the currently pending claims language.

***Conclusion***

**10.** Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Siegfried Chencinski whose telephone number is (571)272-6792. The Examiner can normally be reached Monday through Friday, 9am to 6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Alexander Kalinowski, can be reached on (571) 272-6771.



Art Unit: 3695

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks, Washington D.C. 20231***

or Faxed to (571)273-8300 [Official communications; including After Final communications labeled "Box AF"]

or Faxed to (571) 273-6792 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to the address found on the above USPTO web site in Alexandria, VA.

SEC

Art Unit 3695

September 29, 2010

/Charles R. Kyle/

Supervisory Patent Examiner, Art Unit 3695